IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.295 OF 2004

Ajay Navin Shah. ... Petitioner.

vs

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Sunrise Trading Company & others. ...Respondents

Mr.Sanjay Kothari i/b. M.P.Savla & Co., for Petitioner.

Mr.Sanjay Jain, for Respondents.

CORAM: D.K.DESHMUKH,J.

DATED: 28th June,2005

P.C.:-

1. By this petition, the petitioner challenges the Award made by the Arbitral Tribunal. By that Award, the petitioner has been directed to pay certain amount. The Arbitral Tribunal was constituted by the Hindustan Chamber of Commerce. Admittedly, the petitioner received notice from the Arbitral Tribunal. He did not appear before the Arbitral Tribunal. He raised objection to the jurisdiction of the Arbitral Tribunal. According to him, he

purchased the goods on the basis of purchase order which does not contain arbitration clause, therefore, there is no arbitration clause in existence between the parties. The Arbitral Tribunal has rejected that objection. The petitioner did not participate in the arbitration proceedings. Thereafter, the Award has been made. The learned Counsel for the petitioner relying on the judgment of the Single Judge of this Court in "Shri.Pramod Chimanbai Patel Vs. M/s.Lalit Constructions & Another; 2002(4) ALL MR 345" contends that though the arbitral tribunal has held that the arbitration clause contained in the invoice, however by unilaterally sending the invoice the arbitration clause does not come into existence. Perusal of the judgment of the learned Single Judge of this Court in the case "Shri.Pramod Chimanbai Patel Vs. M/s.Lalit Constructions & Another; 2002(4) ALL MR 345" it is seen that the learned Single Judge has held that for the arbitration clause to come into existence because of exchange of correspondence between the parties, an active assent by both the parties is necessary. When one party sends letter or communication which contains arbitration clause and other party keeps quiet about it, the arbitration clause does not come into existence. In so far as the present case is concerned, according to the claimant the Arbitration clause was contained in the invoice. Perusal of the contention raised in the letter shows that he did not refer to the invoice though it is admitted position that he has received the invoice before he raised the objection before the Arbitral Tribunal. It appears from record that the petitioner had also addressed a letter dated 27.7.2002 to the claimant wherein he had stated that he issued two cheques making payment for

goods received by him after receiving the invoice no.174 and 194 against his purchase order no.1014 dated 1.2.2001. In this situation, therefore, in view of the letter and in view of the objection raised by the petitioner ignoring invoice totally, in my opinion, no fault can be found with the findings recorded by the Arbitral Tribunal. It was submitted before me that the letter dated 27.7.2002 written by the petitioner to the respondent no.1-company does not disclose correct picture. If that is so, it was for the petitioner to appear before the Arbitral Tribunal and substantiate his objection/contention by leading evidence. However, the petitioner has chosen not to appear before the Arbitral Tribunal despite receiving the notice, admittedly, from the Arbitral Tribunal. What the petitioner is trying to do by filing this petition is that he is trying to take advantage of his absence before the Arbitral Tribunal. Permitting the petitioner to raise all his contentions which were possible for him to raise by appearing before the Arbitral Tribunal, in my opinion, would defeat the very purpose of claims being made before the Arbitral Tribunal. In my opinion, all the contentions that are open to the party have to be raised before the Arbitral Tribunal and every step should be taken to substantiate those contentions. A party who remained absent should not be allowed by the Court to take advantage of its absence.

2. The next contention which is urged is that the petitioner had raised the objection alleging bias against the Hindustan Chamber of Commerce because the Hindustan Chamber of Commerce have written a letter to the

petitioner to make payment of the dues. In my opinion, the submission merely to be stated to be rejected. An objection as to the bias has to be raised in relation to the Arbitrator who is appointed by the Body. Any allegations of bias made against a body is not relevant. In any case, the objection of bias against the body which has constituted the arbitral tribunal cannot be decided by the Arbitrator. Therefore, that objection has also no substance. It appears that all these contentions have been raised by the petitioner merely to avoid his liability to pay the amount. In the result therefore, the petition fails and is dismissed. The petitioner is directed to pay cost of this petition to the respondents as incurred by the respondents.